



City of Tower

PO Box 576 • Tower, MN 55790 • (218)753-4070

RESOLUTION 2020-012

A RESOLUTION AUTHOURIZING THE ISSUANCE, SALE AND DELIVERY OF A \$253,000 TEMPORARY GENERAL OBLIGATION UTILITY REVENUE NOTE, SERIES 2020A

Motion by: Sheldon Majerle Second By: Rachel Beldo

WHEREAS, Since 1987, the City of Tower and Breitung Township have shared fiscal responsibility for joint water and wastewater facilities through a Tower-Breitung Waste Water established by Board Joint Powers Agreement; and

WHEREAS, the joint water treatment plant requires an upgrade due to the emergent bacterial seepage from East Two River; and

WHEREAS, this upgrade requires financing beyond the reserves of the Board, the City, and the Township; and

NOW THEREFORE, BE IT HEREBY RESOLVED BY THE CITY COUNCIL OF TOWER, MINNESOTA, ST. LOUIS COUNTY, MINNESOTA (the "Issuer") as follows:

Section 1. Note Purpose, Authorization, and Award.

1.01 Joint Powers Board. A. Under the authority of Minnesota Statutes, Section 471.59, the Issuer and the Town of Breitung, Minnesota (the "Town" and together with the Issuer, the "Members"), have entered into the Tower Breitung Wastewater Board Joint Powers Agreement dated December 29, 2017 (the "Joint Powers Agreement"), establishing the Tower Breitung Wastewater Board (the "Board") for the purpose of jointly acquiring, maintaining, and operating water facilities (the "System") and wastewater disposal facilities, for the mutual benefit of the Members.

B. The Board has determined that an upgrade and improvements to the water treatment plant serving the System are necessary (the "Project") and the Members have agreed to share the costs of the Project equally.

C. The Members will enter into that Amendment No.1 to Joint Powers Agreement General Obligation Revenue Obligations (the "JPA Amendment") specifying the terms and responsibilities of each Member to finance the Project.

This institution is an equal opportunity provider and employer

"Lake Vermilion's Harbor City"

D. The Issuer has applied, on behalf of itself, the Board and the Town, to the Minnesota Public Facilities Authority (the "PFA") for assistance in the form of a tax-exempt loan (the "Anticipated Loan") to finance a portion of the total costs of the Project.

E. The Issuer has agreed to issue temporary obligations, including the Note authorized in this resolution, to finance Project costs prior to receipt of the Anticipated Loan.

F. As specified in the JPA Amendment, the Town will issue a General Obligation Loan Anticipation Note (the "Town Note") payable to Issuer in a principal amount equal to its 50% share of the Note (defined below) and payable as to interest at the rate then in effect on the Note and pledging: (i) net revenues of its water utility, including its portion of the System, at the time and in the amounts necessary to pay principal and interest on the Town Note; and (ii) its full faith, credit and taxing authority to payment of the Town Note. The principal of the Town Note and interest thereon shall be payable on the dates and at the rates applicable to the Note.

1.02 Approval of JPA Amendment. The Issuer hereby approves the JPA Amendment in substantially the form attached hereto as **Exhibit A**, with such changes as may be approved by the Mayor and Bond Council to the Issuer, and authorizes execution of the JPA Amendment by the Mayor and Clerk-Treasurer.

1.03 Statutory Authority. Pursuant to authority contained in Minnesota Statutes, Section 444.075, 475.61, Subdivision 6, Chapter 475, and the Issuer's Charter (collectively, the "Act"), the Issuer is authorized to issue its temporary general obligation for the purpose of providing funds for the temporary financing of the Project which is necessary for timely payment of anticipated expenditures from the Project Account established herein.

1.04 Authorization.

A. The City Council directs the issuance and sale of a \$253,000 Temporary General Obligation Utility Revenue Note, Series 2020A of the Issuer dated as of the date and closing and delivery thereof (the "Note"). The principal of and interest on the Note shall be paid primarily from Net Revenues (defined below) derived from the operation of the Issuer's municipal water utility, including the Issuer's portion of the System (the "Utility"), and long term definitive bond or additional temporary obligations which the Issuer shall offer for sale in advance of the maturity of the Note (the "Permanent Obligations"). The proceeds of the Anticipated Loan shall constitute the Permanent Obligations and shall be used to pay principal and interest on the Note.

B. The Note is payable from net revenues of the Utility in excess of claims duly approved and allowed for payment of expenses of the Utility which, under generally accepted accounting principles, constitute normal, reasonable, and current expenses of operating and maintaining the Utility and to maintain such reasonable reserves for such expenses of the Utility as the City Council shall determine to be necessary from time to time (the "Net Revenues"). The Permanent Obligations and Net Revenues are collectively referred to herein as the "Pledged Revenues."

1.05 Municipal Advisor. The Issuer has retained the services of David Drown Associates, Inc., as its municipal advisor.

1.06 Award. The Issuer has received an proposal for a loan to be evidenced by the Note from Bank of Zumbrota, located in Zumbrota, Minnesota (the "Lender"), in the amount of \$253,000 to pay costs of the Project, upon condition that the Note mature and bear interest at the times and annual rate set forth in Section 2. The Issuer, after due consideration, finds such offer reasonable and proper and the offer of the Lender is accepted. All actions of the Mayor and the Clerk-Treasurer, taken with regard to the sale of the Note are ratified and approved.

Section 2. Terms of the Note.

2.01 Interest Rate and Principal Maturities. The Note shall be dated the date of its closing and delivery as the date of original issue, shall be issued in the denomination equal to the principal amount thereof, shall be issued in fully registered form and lettered and numbered R-1. The Note shall bear interest at the annual rate of 2.45 percent and shall mature on March 1, 2023 (the "Maturity Date"). The Note is payable as to principal on the Maturity Date.

2.02 Prepayment. The Note is prepayable in whole only on any date at a price of par plus accrued interest to the prepayment date.

2.03 Interest Payment Dates. The interest on the Note shall be payable semi-annually on March 1 and September 1 of each year (each referred to herein as an "Interest Payment Date"), commencing September 1, 2020. Interest will be computed upon the basis of a 360-day year of twelve 30-day months.

2.04 Preparation and Execution. A. The Note shall be prepared for execution in accordance with the approved form and shall be signed by the manual signature of the Mayor and attested by the manual signature of the Clerk-Treasurer. The corporate seal of the Issuer may be omitted from the Note as permitted by law. In case any officer whose signature shall appear on the Note shall cease to be an officer before delivery of the Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if he or she had remained in office until delivery.

B. The Clerk-Treasurer is authorized and directed to obtain a copy of the proposed approving legal opinion of Fryberger, Buchanan, Smith & Frederick, P.A., Duluth, Minnesota, which is to be complete thereof and cause the opinion to be attached to the Note.

2.05 Appointment of Registrar. The City Council hereby appoints the Clerk-Treasurer, as registrar, authenticating agent, paying agent and transfer agent for the Note (the "Registrar"). The Issuer reserves the right to name a substitute, successor Registrar upon giving prompt written notice to the registered Note holder.

2.06 Registered Owner. The Note shall be registered in the name of the Lender.

2.07 Registration Provisions. The Issuer shall cause to be kept by the Registrar a bond register in which, subject to such reasonable regulations as the Registrar may prescribe, the Issuer shall provide for the registration of the Note and the registration of transfers of the Note entitled to be registered or transferred as herein provided. In the event of the resignation or removal of

the Registrar or its incapability of acting as such, the Note registration records shall be maintained at the office of the successor Registrar as may be appointed by the City Council.

2.08 Payment. A. The Issuer and the Registrar may treat the person in whose name the Note is registered as the owner of such Note for the purpose of receiving payment of principal of and interest on such Note and for all other purposes whatsoever, whether or not such Note be overdue, and neither the Issuer nor the Registrar shall be affected by notice to the contrary.

B. The principal of and interest on the Note shall be payable by the Registrar in such funds as are legal tender for the payment of debts due the United States of America. The Issuer shall pay the reasonable and customary charges of the Registrar for the disbursement of principal and interest.

2.09 Delivery. Delivery of the Note and payment of the purchase price shall be made at a place mutually satisfactory to the Issuer and the Lender. A typewritten and executed Note shall be furnished by the Issuer without cost to the Lender. The Note, when prepared in accordance with this Resolution and executed, shall be delivered by or under the direction of the Issuer to the Lender upon receipt of the purchase price plus accrued interest.

Section 3. Form of the Note.

3.01 The Note shall be printed or typewritten in substantially the following form:

UNITED STATES OF AMERICA
STATE OF MINNESOTA
COUNTY OF ST. LOUIS

R-1 \$253,000

CITY OF TOWER
TEMPORARY GENERAL OBLIGATION UTILITY REVENUE NOTE,
SERIES 2020A

<u>Rate</u>	<u>Maturity Date</u>	<u>Date of Original Issue</u>
2.45%	March 1, 2023	March 2, 2020

REGISTERED OWNER: BANK OF ZUMBROTA

PRINCIPAL AMOUNT: TWO HUNDRED FIFTY-THREE THOUSAND DOLLARS

The City Council (the "City Council") of the City of Tower, St. Louis County, Minnesota (the "Issuer"), for value received, promises to pay to the registered owner specified above, or registered assigns, the principal amount specified above, and to pay interest on said principal amount to the registered owner hereof from date of original issue set forth above, or from the most recent Interest Payment Date (defined below) to which interest has been paid or duly provided for, until the principal amount is paid, said interest being at the rate per annum specified above.

Interest is payable semi-annually on March 1 and September 1 each year (each referred to herein as an "Interest Payment Date") commencing on September 1, 2020. This Note is payable as to principal on the maturity date set forth above. Payments shall be applied first to interest due on the outstanding principal balance and thereafter to reduction of the principal balance.

Both principal hereof and interest hereon are payable in lawful money of the United States of America by check or draft at the main office of the Clerk-Treasurer as note registrar, authenticating agent, paying agent and transfer agent (the "Registrar"), or at the office of such successor Registrar as may be designated by the governing body of the Issuer. The Registrar shall make all payments with respect to this Note directly to the registered owner hereof shown on the bond registration records maintained on behalf of the Issuer by the Registrar at the close of business on the 15th day of the month next preceding the Interest Payment Date (whether or not a business day) at such owner's address shown on said bond registration records, without, except for final payment of principal of this Note, the presentation or surrender of this Note, and all such payments shall discharge the obligation of the Issuer to the extent of the payments so made. The payment of principal of this Note shall be made upon presentation and surrender of this Note to the Registrar when due.

This Note comprises the entire series issued by the Issuer in the aggregate amount of \$253,000 pursuant to the authority contained in Minnesota Statutes, Sections 444.075 and 475.61, Subdivision 6, Chapter 475 and Section 7 of the Issuer's charter, and all other laws thereunto enabling, and pursuant to an authorizing resolution adopted by the governing body of the Issuer on February 10, 2020 (the "Resolution"), for the purpose of providing funds for (i) the temporary financing of a portion of the costs of improvements to the water treatment plant serving the System (as defined in the Resolution), including engineering costs; (ii) to pay certain expenses incurred in the issuance of the Note; and (iii) to pay a portion of the interest cost of the Note. The principal of and interest on this Note shall be paid primarily from net revenues (the "Net Revenues") derived from the operation of the Issuer's water utility, including the

Issuer's portion of the System (the "Utility") in excess of normal, reasonable and current costs of the operation and maintenance of the Utility, from the proceeds of permanent bonds or additional temporary bonds which the Issuer shall offer for sale in advance of the maturity of this Note (the "Permanent Obligations"), and payments received from the Town on the Town Note (as defined in the Resolution). Additionally, the Issuer is in the process of applying and anticipates approval of a loan by the Minnesota Public Facilities Authority (the "Anticipated Loan"). The proceeds of the Anticipated Loan shall constitute the Permanent Obligations and shall be used to pay principal and interest on this Note. The Permanent Obligations and Net Revenues are collectively referred to herein as the "Pledged Revenues." The Pledged Revenues are sufficient to pay the interest on and principal of this Note.

The principal amount evidenced by this Note was drawn upon by Issuer in accordance with the Loan Agreement between Issuer and Lender dated as of the date of the date hereof.

In the Resolution the Issuer has covenanted and agreed that if this Note cannot be paid at maturity from the Pledged Revenues or from other funds appropriated by the governing body of the Issuer, this Note will be paid from the proceeds of additional definitive obligations which will be issued and sold prior to the maturity date of this Note. The holder of this Note shall have and may enforce, by mandamus or other appropriate proceedings, all rights respecting the levy and collection of taxes that are granted by law to holders of permanent bonds, except the right to require the levies to be collected prior to the maturity of this Note. If this Note is not paid in full at maturity, the holder hereof may require the issuance in exchange for it, at par, of a new temporary bond maturing within one year from its date of issue but not subject to any other maturity limitation, and bearing interest at the maximum rate permitted by law. Reference is made to the Resolution to which reference is made for a full statement of rights and powers thereby conferred.

The Issuer has further covenanted and agreed that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the Utility at the times and in the amounts required to pay the normal, reasonable and current expenses of operating and maintaining the system, and also to produce Net Revenues, which along with the Permanent Obligations will be at least adequate at all times to pay the principal and interest due on this Note.

For the prompt and full payment of such principal and interest as they become due, the full faith and credit and taxing power of the Issuer are irrevocably pledged. The Issuer has designated this Note as "qualified tax-exempt obligations" pursuant to Section 265(b)(3) of the Internal Revenue Code of 1986, as amended.

The Note is prepayable on any date at a price of par plus accrued interest.

IT IS CERTIFIED AND RECITED that all acts and conditions required by the laws and the Constitution of the State of Minnesota to be done and to exist precedent to and in the issuance of this Note, in order to make it a valid and binding general obligation of the Issuer in accordance with its terms, have been done and do exist in form, time and manner as so required; that all taxable property within the limits of the Issuer is subject to the levy of ad valorem taxes to the extent needed to pay the principal hereof and the interest hereon when due, without limitation as to rate or amount and that the issuance of this Note does not cause the indebtedness of the Issuer to exceed any constitutional or statutory limitation.

IN WITNESS WHEREOF, the City Council of the City of Tower, St. Louis County, Minnesota, by its governing body, has caused this Note to be executed in its name by the signature of the Mayor and attested by the signature of the Clerk-Treasurer.

ATTEST:

(form - no signature required)

Clerk-Treasurer

(form - no signature required)

Mayor

REGISTRATION CERTIFICATE

This Note must be registered as to both principal and interest in the name of the owner on the books to be kept by the Clerk-Treasurer of the City of Tower, Minnesota, as Registrar. No transfer of this Note shall be valid unless made on said books by the registered owner or the owner's attorney thereunto duly authorized and similarly noted on the registration books. The ownership of the unpaid principal balance of this Note and the interest accruing thereon is registered on the books of the Issuer in the name of the registered owner last noted below.

<u>Date</u>	<u>Registered Owner</u>	<u>Signature of Clerk-Treasurer</u>
3/2/2020	Bank of Zumbrota 1440 South Main Street P.O. Box 8 Zumbrota, MN 55992 Federal Tax I.D. No.: 41-0250300	<i>(form - no signature required)</i>

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers into

(Name and Address of Assignee)

_____ Social Security or Other
_____ Identifying Number of Assignee

the within Note and all rights thereunder and irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books kept for registration thereof with full power of substitution in the premises.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name of the registered owner as it appears upon the face of the within Note in every particular, without alteration or enlargement or any change whatsoever.

Signature Guaranteed:

(Bank, Trust Company, member of
National Securities Exchange)

THIS INSTRUMENT HAS NOT BEEN REGISTERED UNDER THE FEDERAL SECURITIES ACT OF 1933, AS AMENDED, AND MAY NOT BE SOLD OR OTHERWISE DISPOSED OF FOR VALUE, OR TRANSFERRED, WITHOUT (i) AN OPINION OF COUNSEL THAT SUCH SALE, DISPOSITION OR TRANSFER MAY LAWFULLY BE MADE WITHOUT REGISTRATION UNDER THE FEDERAL SECURITIES ACT OF 1933, AS AMENDED AND UNDER APPLICABLE STATE SECURITIES LAWS, OR (ii) SUCH REGISTRATION. THE TRANSFERABILITY OF THIS INSTRUMENT IS SUBJECT TO RESTRICTIONS REQUIRED BY (1) FEDERAL AND STATE SECURITIES LAWS GOVERNING UNREGISTERED SECURITIES; AND (2) THE RULES, REGULATIONS, AND INTERPRETATIONS OF THE GOVERNMENTAL AGENCIES ADMINISTERING SUCH LAWS. THIS INSTRUMENT HAS NOT BEEN

REGISTERED UNDER CHAPTER 80A OF MINNESOTA STATUTES OR OTHER APPLICABLE STATE BLUE SKY LAWS AND MAY NOT BE SOLD, TRANSFERRED, OR OTHERWISE DISPOSED OF FOR VALUE EXCEPT PURSUANT TO REGISTRATION OR OPERATION OF LAW.

Section 4. Funds, Accounts and Covenants.

4.01 Rate Covenant. The Issuer covenants and agrees with the holder of the Note and with its taxpayers that it will impose and collect just and equitable charges for all use and for the availability of all facilities of the Utility at the times and in the amounts required to pay the normal, reasonable, and current expenses of operating and maintaining the Utility, and also to produce Net Revenues which will be at least adequate at all times to pay the principal and interest due on the Note and on all other obligations heretofore or hereafter issued and made payable from said Net Revenues, and will operate the Utility and segregate and account for the revenues thereof as provided in this section.

4.02 Funds, Accounts, Appropriations and Revenues.

A. Water Fund. The Issuer covenants and agrees with the holder of the Note and with its taxpayers as follows:

(1) It will impose and collect just and equitable charges for all use and for the availability of all facilities of its water utility, including Issuer's portion of the System (the "Utility") at the times and in the amounts required to pay the normal, reasonable, and current expenses of operating and maintaining such Utility, and also to produce Net Revenues, which will be at least adequate at all times to pay the principal and interest due on the Note and on all other notes and bonds heretofore or hereafter issued and made payable from said Net Revenues, and will operate the Utility and segregate and account for the revenues thereof as provided in this Section.

(2) It will place all such charges for the use and availability of the Utility, when collected, and all money received from the sale of any facilities or equipment of the Utility in the Water Fund (the "Water Fund"). Except as provided in this Section, the Water Fund shall be used only to pay claims duly approved and allowed for payment of expenses which, under generally accepted accounting principles, constitute normal, reasonable, and current expenses of operating and maintaining the Utility, and to maintain such reasonable reserves for such expenses as the City Council shall determine to be necessary from time to time. Sums in excess of those required to make such payments and maintain such reserves constitute the Net Revenues, a portion of which are herein pledged and appropriated first to pay the principal of and interest when due on the Note.

(3) Surplus Utility revenues from time to time received in the Water Fund, in excess of payments due from and reserves required to be maintained in the Water Fund and in the Debt Service Account, may be used for necessary capital expenditures for the improvement of the Utility, for the prepayment and redemption of notes and bonds constituting a lien on the Utility, and for any other proper municipal purpose consistent with policies established by resolution of the City Council.

4.03 2020A Temporary General Obligation Utility Revenue Note Fund. There is created a special fund to be designated the "2020A Temporary General Obligation Utility Revenue Note Account" (the "Fund") to be administered and maintained by the Clerk-Treasurer as a bookkeeping account separate and apart from all other funds and accounts maintained in the official financial records of the Issuer. The Fund shall be maintained in the manner herein specified until the Note and the interest thereon have been fully paid. There shall be maintained in the Fund two separate accounts, to be designated the "Project Account," and the "Debt Service Account," respectively (together, the "Accounts"):

A. *Project Account.* The Project Account shall be maintained in the manner herein specified:

(i) On receipt of the purchase price of the Note, the Issuer shall credit proceeds from the sale of the Note, less the amounts allocated as capitalized interest funded from Note proceeds (the "Capitalized Interest"); less amounts used to pay part of the interest cost of the issue as allowed by Section 475.56 of the Act (the "Additional Interest"); and less any accrued interest paid by Lender at closing and delivery of the Note (the "Accrued Interest"), if any, to the Project Account.

(ii) From the Project Account there shall be paid all costs and expenses of the Project, including preliminary expenses, the cost of any construction contracts heretofore let and all other costs incurred and to be incurred of the kind authorized in Section 475.65 of the Act; and the moneys in said account shall be used for no other purpose except as otherwise provided by law; provided that the proceeds of the Note may also be used to the extent necessary to pay interest on the Note.

B. *Debt Service Account.* The Debt Service Account shall be maintained in the manner herein specified until all of the Note and the interest thereon have been fully paid:

(i) There are irrevocably appropriated and pledged to the Debt Service Account: (a) Net Revenues which, along with the Permanent Obligations and payments from the Town on the Town Note, will be sufficient to pay the principal of and interest on the Note when due; (b) the Capitalized Interest; (c) the Accrued Interest; (d) the Additional Interest; (e) all funds remaining in the Project Account after completion of the Project and payment of the costs thereof; (f) proceeds of the Permanent Obligations; (g) the Issuer's funds in an amount necessary to provide the coverage specified in Minnesota Statutes, Section 475.61 and (h) any and all other monies which are properly available and are appropriated by the governing body of the Issuer to the Debt Service Account; and (i) investment earnings, if any, on the moneys identified in preceding clauses (a) through (h).

(ii) Immediately prior to each Interest Payment Date, the Clerk-Treasurer shall transfer to the Debt Service Account amounts of Net Revenues which are sufficient, along with any Pledged Revenues then on deposit in the Debt Service Account, for the payment of all interest and principal then due on the Note.

(iii) If the balances in the Debt Service Account are ever insufficient to pay all principal and interest then due on the Note, the Clerk-Treasurer shall nevertheless provide sufficient money first from the Project Account, next from the Fund and from any other funds of the Issuer which are available for that purpose, and such other funds shall be reimbursed from the Debt Service Account when the balance therein is sufficient.

C. *Investments.* Monies on deposit in the Water Fund, the Project Account and in the Debt Service Account may, at the discretion of the Issuer, be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investments shall mature at such times and in such amounts as will permit for payment of the principal and interest on the Note when due.

4.04 No Tax Levy. It is determined that the Pledged Revenues pledged for payment of principal and interest on the Note will produce at least five percent in excess of the amount needed to meet when due, the principal and interest payments on the Note and that no tax levy is needed at this time.

4.05 Definitive Bonds. In accordance with its statutory duties under Minnesota Statutes, Section 475.61, Subdivision 6, the Issuer covenants and agrees with the holders of the Note that if the Note cannot be paid at maturity from the Pledged Revenues or from other funds appropriated by the Issuer, the Note will be paid from the proceeds of permanent bonds which the City Council shall offer for sale in advance of their maturity but the indebtedness funded by the Note shall not be extended by the issue of additional temporary bonds for more than six years from the date of the Note. The holder of the Note shall have and may enforce, by mandamus or other appropriate proceedings, all rights respecting the levy and collection of taxes that are granted by law to holders of permanent bonds, except the right to require the levies to be collected prior to the maturity of the Note. If the Note is not paid in full at maturity, the holder may require the issuance in exchange for them, at par, of new temporary bonds maturing within one year from their date of issue but not subject to any other maturity limitation, and bearing interest at the maximum rate permitted by law.

4.06 General Obligation. It is recognized, however, that the Issuer's liability on the Note is not limited to the Pledged Revenues and other appropriated funds so pledged, and the Issuer covenants and agrees that it will levy upon all taxable property within the Issuer, and cause to be extended, assessed, and collected, any taxes found necessary for full payment of the principal of and interest on the Note and any definitive obligations, without limitation as to rate or amount.

Section 5. Tax Covenants.

5.01 A. The Issuer covenants and agrees with the holders of the Note that the Issuer will (i) take all action on its part necessary to cause the interest on the Note to be exempt from federal income taxes including, without limitation, restricting, to the extent necessary, the yield on investments made with the proceeds of the Note and investment earnings thereon, making required payments to the federal government, if any, and maintaining books and records in a specified manner, where appropriate, and (ii) refrain from taking any action which would cause interest on the Note to be subject to federal income taxes, including, without limitation, refraining from spending the proceeds of the Note and investment earnings thereon on certain specified purposes.

B. For purposes of qualifying for the small issuer exception to the federal arbitrage rebate requirements, the Issuer finds, determines and declares:

- (i) the Issuer is a governmental unit with general taxing powers;
- (ii) the Note is not a "private activity bond" as defined in Section 141 of the Internal Revenue Code of 1986, as amended (the "Code");
- (iii) 95% or more of the net proceeds of the Note is to be used for local governmental activities of the Issuer; and
- (iv) the aggregate face amount of the tax exempt obligations (other than private activity bonds) issued by the Issuer during the calendar year in which the Note is issued is not reasonably expected to exceed \$5,000,000, all within the meaning of Section 148(f)(4)(D) of the Code.

C. In order to qualify the Note as "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code, the Issuer makes the following factual statements and representations:

- (i) the Note is not "private activity bonds" as defined in Section 141 of the Code;
- (ii) the Issuer designates the Note as "qualified tax-exempt obligations" for purposes of Section 265(b)(3) of the Code;
- (iii) the reasonably anticipated amount of tax-exempt obligations (other than private activity bonds, treating qualified 501(c)(3) bonds as not being private activity bonds) which will be issued by the Issuer (and all entities whose obligations will be aggregated with those of the Issuer) during the calendar year in which the Note is being issued will not exceed \$10,000,000; and
- (iv) not more than \$10,000,000 of obligations issued by the Issuer during the calendar year in which the Note is being issued have been designated for purposes of Section 265(b)(3) of the Code.

Section 6. Certificate of Proceedings; Miscellaneous.

6.01 The Clerk-Treasurer or the designee thereof is directed to file with the County Auditors a certified copy of this resolution and such other information as the County Auditors may require, and to obtain from the County Auditors a certificate stating that the Note herein authorized have been duly entered on the County Auditors' register.

6.02 The officers of the Issuer are authorized and directed to prepare and furnish to the Lender of the Note and to bond counsel for the Note certified copies of all proceedings and records of the Issuer relating to the authorization and issuance of the Note and other affidavits and certificates as may reasonably be requested to show the facts relating to the legality and marketability of the Note as such facts appear from the official books and records of the officers' custody or otherwise known to them. All of such certified copies, certificates and affidavits, including any heretofore furnished, constitute representations of the Issuer as to the correctness of facts recited therein and the actions stated therein to have been taken.

6.03 In the event of the absence or disability of the Mayor, the Clerk-Treasurer, or such officers or members of the City Council as in the opinion of the Issuer's attorney, may act in their behalf, shall without further act or authorization, execute and deliver the Note, and do all things and execute all instruments and documents required to be done or executed by such absent or disabled officers.

6.04 No official statement or prospectus has been prepared or circulated by the Issuer in connection with the sale of the Note and the Lender has made its own investigation concerning the Issuer as set forth in a Lender's certificate or investment letter.

Section 7. Loan Agreement. The proceeds of the Note will be advanced to the Issuer in accordance with the terms of this Resolution and with a Loan Agreement between the Issuer, and the Lender (the "Loan Agreement"). The Mayor and Clerk-Treasurer of the Issuer are hereby authorized and directed to execute the Loan Agreement substantially in the form currently on file in the office of the Issuer.

Section 8. Post-Issuance Compliance Policy and Procedures. The Issuer has previously approved a Pre- and Post-Issuance Compliance Policy and Procedures which applies to qualifying obligations to provide for compliance with all applicable federal regulations for tax-exempt obligations or tax-advantaged obligations (collectively, the "Policy and Procedures"). The Issuer hereby ratifies the Policy and Procedures for the Bonds. The Clerk-Treasurer continues to be designated to be responsible for post-issuance compliance in accordance with the Policy and Procedures.

Section 9. Effective Date of Resolution. This Resolution is effective upon adoption by the Town of Bruiting of a resolution approving the JPA Amendment, the principal amount of the this Note, and agreeing to issue the Town Note.

(remainder of this page left blank intentionally)

Whereupon the resolution was declared duly passed and adopted.

Passed and adopted by Tower City Council this 10th day of February, 2020.

VOTE	Kringstad	Beldo	Majerle	Shedd	Setterberg
Aye	<input checked="" type="checkbox"/>				
Nay	<input type="checkbox"/>				
Abstain	<input type="checkbox"/>				
Absent	<input type="checkbox"/>				



Orlyn Kringstad
Mayor

Attested by:



Victoria Ranua
City Clerk/Treasurer

EXHIBIT A
JOINT POWERS AGREEMENT AMENDMENT

Amendment No. 1 to Joint Powers Agreement
General Obligation Revenue Obligations

This Amendment No. 1 to Joint Powers Agreement (the "Amendment No. 1") dated as of _____, 2020 is being entered into between the City of Tower, St. Louis County, a municipal corporation and political subdivision organized and existing under the laws of the State of Minnesota (the "Issuer" or "Tower") and the Town of Breitung, St. Louis County, a municipal corporation and political subdivision organized and existing under the laws of the State of Minnesota ("Breitung") (each individually a "Party" and collectively the "Parties").

Recitals

1. This Amendment No. 1 is being entered into pursuant to Minnesota Statutes, Section 471.59 (the "Joint Powers Act") solely for the purposes stated herein. The Parties previously formed the Tower Breitung Wastewater Board (the "Board") as a joint powers board pursuant to Minnesota Statutes, Section 471.59 (the "Joint Powers Act"), by entering into an agreement dated December 29, 2017 (the "2017 Agreement") under the Joint Powers Act, which revoked and replaced the original joint powers agreement entered into between the Issuer and Breitung dated June 2, 1987, including any amendments thereto.

2. Pursuant to the 2017 Agreement, the Parties created the Board to allow the Issuer and Breitung to continue providing safe, efficient, and cost-effective means for jointly acquiring, maintaining, and operating water and wastewater facilities in a manner that is fair and equitable to the citizens of each respective Party while adhering to applicable local, state, and federal regulations.

3. The Board owns, operates and maintains the joint facilities over which it exercises its powers, including the water treatment plant, a portion of the collection and distribution system and associated facilities and the Project (the "System"). Each Party imposes and collects rates and charges for use of the System and makes contributions to the Board for acquisition, operation and maintenance of the System. The Parties are working cooperatively to plan, design, and construct improvements to the water treatment plant for the Issuer and Breitung (the "Project"), which is a municipal purpose as contemplated by the Charter of the City of Tower (the "Charter").

4. The Issuer is separately undertaking construction of a new water line, which will run from the treatment plant to the Issuer's city limits. The cost of the new water line is estimated

to be approximately \$1.1 million and will be borne exclusively by the Issuer separately from this Amendment No. 1.

5. The total estimated cost of the Project is approximately \$3.4 million, which will be allocated between the Parties as described below.

6. The Issuer has applied, on behalf of itself and on behalf of Breitung, to the Minnesota Public Facilities Authority (the "PFA") for assistance, in the form of a tax-exempt loan (the "Anticipated Loan"), to finance a portion of the total costs of the Project. The Issuer, on behalf of itself and on behalf of Breitung, is also seeking temporary financing for Project costs.

7. The Parties have agreed to cooperate, through this Amendment No. 1, in the issuance by Issuer of: (i) temporary general obligation revenue obligations, in one or more issues, in a total amount not to exceed \$3,400,000 (the "Temporary Obligations"); and (ii) permanent obligations or additional temporary bonds as further described in Minnesota Statutes Section 475.61 in an amount not to exceed \$3,400,000 (the "Permanent Obligations") to evidence the Anticipated Loan pursuant to Minnesota Statutes, Chapters 444 and 475 (the "Act") and the Charter, the proceeds of which will be used to pay Project costs and the outstanding principal of the Temporary Obligations. The Permanent Obligations and Temporary Obligations are together referred to as the "Obligations."

8. To further aid the Parties with financing the Project, the Parties have applied for certain grants from the Iron Range Resources and Rehabilitation Board (the "IRRRB") and Community Development Block Grant ("CDBG") program.

The Parties therefore agree as follows:

1. Recitals. The above recitals are incorporated and made part of this Amendment No. 1.

2. Finding. It is in the best interests of the Parties to cooperate with and facilitate the issuance of the Obligations by the Issuer.

3. Statement of Purpose and Authority. This Amendment No. 1 is entered into for the purpose of facilitating the issuance of the Obligations by the Issuer pursuant to the Act, in order to finance the costs of the Project. Each of the Parties is a governmental unit under the Act and the Joint Powers Act, and has authority to enter into this Amendment No. 1.

4. Authorizations. Breitung authorizes the Issuer to issue a 50% portion of the Obligations on its behalf in conformance with the terms and conditions set forth under this Amendment No. 1 and to take all actions necessary or convenient in connection with such issuance and permitted by the Act.

5. General Obligations. The Obligations shall be general obligations of the Issuer. Breitung agrees to pay fifty percent (50%) of the Obligations in the amount of not to exceed \$1.7 million, plus interest thereon payable at the same interest rate as is payable from time to time on the Obligations as further provided below.

6. Term. This Amendment No. 1 shall terminate only upon the earlier of:

- (a) final maturity and payment of the Obligations; or
- (b) payment in full of the Obligations prior to their final maturity; or
- (c) payment of a Party's 50% portion of the Obligations and upon the mutual consent in writing of the Parties.

7. Mutual Covenants.

Each of the Parties covenants and agrees that:

- (a) the Board shall assume all responsibilities for the operation and maintenance of the Project, including the replacement of equipment;
- (b) the Parties will at all times continue to impose, maintain and collect rates, charges and rentals for the services, facilities and benefits provided by the System (including the Project and all other additions and betterments to the System) to their inhabitants and industries and all others, such as will make the revenues of the System sufficient to meet all of the requirements of the 2017 Agreement, to pay its respective 50% portion of the principal and interest due on the Obligations, including at least sufficient for the payment of principal and interest currently due, and the maintenance of any such funds and accounts provided for in any such respective authorizing documents, and with respect to all bonds payable therefrom, including the Obligations;
- (c) each Party will cause proper and adequate books of record and accounts to be kept showing complete and correct entries of all receipts, disbursements and other transactions relating to the System, the monthly revenues derived from its operation, and the segregation and application of the revenues in accordance with any authorizing resolution, in such reasonable detail as may be determined by such Party in accordance with generally accepted accounting practices and principles; and

- (d) the Parties will not mortgage, lease, sell, or otherwise dispose of any real or personal properties of the System, unless duly approved by the Board.

8. Covenants of the Issuer.

The Issuer covenants with Breitung that:

- (a) upon approval by both Parties to incur temporary financing to pay Project costs prior to receipt of approval of the Anticipated Loan from PFA or upon receipt of a commitment for permanent financing, the Issuer will adopt a resolution: (a) authorizing the issuance of the Temporary Obligations; (b) pledging the Anticipated Loan, payments from Breitung on its loan anticipation note and net revenues of its water utility, including the System for payment of the Temporary Obligations; (c) covenanting and agreeing that if the Temporary Obligations cannot be paid on maturity from proceeds of the Anticipated Loan and net revenues of its water utility, including the System, the Temporary Obligations will be paid from definite obligations or additional temporary bonds as provided in Minn. Stat. §475.61; and (d) approving the levy of ad valorem taxes without limitation as to rate or amount in the event the Anticipated Loan and net revenues of its water utility, including the System are insufficient for payment of the Temporary Obligations.
- (b) The Permanent Obligations, when issued, shall be a general obligation of the Issuer issued pursuant to Minnesota Statutes, Sections 115.46 and 444.075, and Chapter 475. The Issuer will pledge net revenues derived from operation of its water utility, including the System and its full faith, credit and taxing powers to pay the principal of and interest on the Permanent Obligations when due.

9. Covenants of Breitung.

Breitung covenants with the Issuer that:

- (a) With respect to the Temporary Obligations, upon approval by both Parties to incur temporary financing to pay Project costs prior to receipt of approval from of the Anticipated Loan from PFA or upon receipt by Issuer of a commitment for permanent financing, the Town will adopt a resolution (i) authorizing the issuance by Tower of a 50% portion of the Temporary Obligations on behalf of Breitung; (ii) authorizing issuance and delivery to Tower by Breitung of its general obligation loan anticipation note in the amount of its 50% portion of the Temporary Obligation, plus interest thereon payable at the same interest rate as the Temporary Obligation; (iii) pledging net revenues of its water utility, including the System and the full, faith and credit and taxing powers of Breitung for payment of its 50% portion of the

Temporary Obligation, plus interest thereon payable at the same interest rate as the Temporary Obligation.

- (b) With respect to the Permanent Obligations, the Town will adopt a resolution (i) authorizing the issuance by Tower of a 50% portion of the Permanent Obligations on behalf of Breitung; (ii) authorizing issuance and delivery to Tower by Breitung of its general obligation sewer revenue note in the amount of its 50% portion of the Permanent Obligations, plus interest thereon payable at the same interest rate as the Permanent Obligations; (iii) pledging net revenues of its water utility, including the System and the full, faith and credit and taxing powers of Breitung for payment of its 50% portion of the Permanent Obligations, plus interest thereon payable at the same interest rate as the Permanent Obligations.

10. Administrative/Other Provisions. The Parties agree as follows:

- (a) The Tower Clerk-Treasurer (the "Clerk-Treasurer") shall manage the payment of the costs of the Project and payment of the Temporary Obligations and Permanent Obligations.
- (b) The Issuer will create a fund designated as the Temporary Obligation Debt Service Fund into which it will deposit payments from Breitung on its loan anticipation note, the Anticipated Loan and net revenues of the System collected for payment of the Temporary Obligation and proceeds of any permanent obligations from which it will pay principal of and interest on the Temporary Obligation as the same become due.
- (c) The Issuer will create a fund designated the Temporary Obligation Construction Account (the "Construction Account"), into which it will deposit all proceeds of the Temporary Obligation. From the Construction Account there shall be paid all costs and expenses of making the Project, including, preliminary expenses, the cost of any construction contracts heretofore let and all other costs incurred and to be incurred of the kind authorized in the Act and Minnesota Statutes, Section 475.65; and the monies in said account shall be used for no other purpose except as otherwise provided by law; provided that if upon completion of the Project there shall remain any unexpended balance in the Construction Account, the balance shall be transferred to the Issuer's Temporary Obligation Debt Service Fund. Other costs for which payment from the Construction Account is authorized shall include costs of legal, financial advisory, and other provisional services, printing and publication costs, and costs of issuance of the Temporary Obligation.
- (d) Proceeds of the Anticipated Loan not used to pay the Temporary Obligations in full shall be used to pay Project costs.

- (e) In the authorizing resolution to be adopted by Issuer authorizing the Permanent Obligations the Issuer will create a fund designated as the "Permanent Obligations Debt Service Fund" into which it will deposit net revenues of its water utility, including the System collected by the Issuer including net revenues received from Breitung and the Board for payment of the Permanent Obligations from which it will pay principal of and interest on the Permanent Obligations as the same become due.
- (f) The Parties appoint the Clerk-Treasurer to manage the respective Debt Service Funds described above. The money in each respective account shall be used for no purpose other than the payment of principal and interest on the Temporary Obligations or Permanent Obligations.
- (g) The Parties agree that the Board will invoice the Parties for its respective share of debt service due on the obligations and such payments will be made to Issuer for payment of principal and interest on the Obligations when due.
- (h) Monies on deposit in the funds and accounts managed by the Clerk-Treasurer may be invested in securities permitted by Minnesota Statutes, Chapter 118A; provided, that any such investments shall mature at such times and in such amounts as will permit for payment of principal and interest on the Temporary Obligations and Permanent Obligations when due.

11. Distribution of Assets. Upon termination of this Amendment No. 1, any property acquired pursuant to this Amendment No. 1 and any surplus moneys shall be distributed in accordance with the 2017 Agreement.

12. Amendments. This Amendment No. 1 may be amended in writing at any time by mutual consent of all of the Parties.

13. Choice of Law. This Amendment No. 1 and the rights and obligations of the parties under this Amendment No. 1 shall be governed by, and construed and interpreted in accordance with, the laws of the State of Minnesota.

14. Headings. The headings herein are for convenience only, do not constitute a part of this Amendment No. 1 and shall not be deemed to limit or affect any of the provisions hereof.

15. Severability. Wherever possible, each provision of this Amendment No. 1 shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Amendment No. 1 shall be prohibited by or invalid under applicable laws, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amendment No. 1.

16. Counterparts. This Amendment No. 1 may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17. Further Assurances. Each Party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other Party may reasonably request in order to carry out the intent and accomplish the purposes of this Amendment No. 1 and the consummation of the transactions contemplated hereby.

18. Settlement of Disputes. Any disputes and controversies arising between the Parties related to this Amendment No. 1 or the Project shall be handled as provided under Article 12 of the 2017 Agreement.

[Signature Pages to Follow]

The Parties are signing this Amendment No. 1 on the date stated in the introductory clause.

CITY OF TOWER, MINNESOTA

By _____
Mayor

By _____
Clerk-Treasurer

(Signature page to Amendment No. 1 to Joint Powers Agreement - General Obligation Revenue Obligations)

TOWN OF BREITUNG, MINNESOTA

By _____

Chair

Attest:

Clerk